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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT STEWART,

Defendant and Appellant.

B176016

(Los Angeles County
Super. Ct. No. TA073587)

APPEAL from a judgment of the Superior Court of Los Angeles, Gary E. Daigh, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An officer stopped a car driven by Robert Stewart. From the side of the car, through an open window, the officer saw Stewart move his right hand over an open console and open his hand. After Stewart stepped out of the car, the officer retrieved two bindles of a substance containing heroin. Stewart was charged with one count of possession of a controlled substance, with allegations that he had suffered two prior strikes. (Health & Saf. Code, § 11350, subd. (a); Pen. Code, § 667, subds. (b) – (i).)

After pleading not guilty, Stewart made a motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. An in camera hearing was conducted but the court determined there were no discoverable items to disclose. Stewart then waived his constitutional rights, changed his plea to no contest, and admitted one strike prior. Pursuant to the terms of a plea agreement, Stewart was sentenced to four years in state prison (mid-term of two years, doubled).

Stewart filed a notice of appeal, and we appointed counsel to represent him. After reviewing the record, appellate counsel filed an opening brief in which no issues were raised. On November 18, 2004, we notified Stewart that he had 30 days within which to submit any issues he wanted us to consider. He has not responded. We have independently examined the record and are satisfied that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

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VOGEL, J.

We concur:

MALLANO, Acting P.J.

SUZUKAWA, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.